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FILE: LIN 04 098 52977 Office: NEBRASKA SERVICE CENTER Date: **MAY 19 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a statement and additional evidence. The petitioner was involved in the 900 person collaboration that discovered the top quark and has served as a group leader for groups of between 20 and 75 members of the DZero (DØ) experiment that includes more than 600 researchers total. For the reasons discussed below, while we acknowledge the petitioner’s contributions and scholarly articles, we cannot conclude that the petitioner meets at least three of the regulatory criteria as required. Specifically, we find that the petitioner meets only two. More generally, while the petitioner has demonstrated impressive accomplishments for his years of experience, he has not demonstrated that he compares with the most renowned and experienced members of his field with respect to his reviewing/editing responsibilities and his role for his more than 600-person collaboration.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It

should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted a March 1, 1995 press release from the Fermi National Accelerator Laboratory (Fermilab) announcing the discovery of the top quark. The press release notes that the discovery was the result of two collaborations, each with about 450 members. Several U.S. newspapers, including the *Washington Post* covered the story. None of these newspaper stories mention the petitioner by name. *India Abroad* and *Indian Express* also covered the story and both name the petitioner as one of several Indian nationals involved in the discovery.

The director questioned the petitioner's role in the discovery of the top quark, noting that the petitioner was identified as a "research scholar," and not as a scientist. The director concluded that the petitioner had not established the significance of the two papers that mention him by name and that articles from 1995 were not evidence of sustained acclaim in 2004 when the petition was filed.

On appeal, the petitioner asserts that he has submitted letters attesting to his role in the discovery and that his ability to make a contribution while still a doctoral student emphasizes his abilities. He submits evidence that *Indian Express* is one of India's largest English language daily newspapers with a circulation of 519,000 in 17 cities. The petitioner has now established that *Indian Express* is major media.

While the press coverage of the top quark discovery relates to the significance of the study and will be considered below as evidence of the significance of the petitioner's contributions to his field, none of the materials, including those that name the petitioner, can be considered to be "about" the petitioner. Moreover, we concur with the director that a single major media article in 1995 that merely names the petitioner as one of two students in a nine person Indian team involved with a 900-person project is not indicative of or consistent with *sustained* national or international acclaim in 2004, when the petition was filed.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Initially, the petitioner asserted that he had served on editorial boards to review two papers submitted to and subsequently published in *Physical Review Letters* and eight papers presented at conferences. He further asserted that he was presently serving on another editorial board. He references exhibit 65, a letter from a DØ coordinator. While the exhibits are not labeled, exhibit 66 is stated to be an e-mail from ██████████. The exhibit that precedes this e-mail is a letter from Professor J██████████. Professor ██████████ states that the petitioner "actively participated" in reviewing the work of other members of the collaboration as the last step before the paper was submitted for publication, ensuring the integrity and correctness of the results. Professor ██████████ asserts that the petitioner made "significant contributions to the review process" and that the collaboration benefited from the petitioner's "experience and his broad physics knowledge."

The director requested evidence of the selection criteria for a reviewer. In response, the petitioner submitted letters from Professor ██████████ and Professor ██████████.

Professor ██████████ Board Chair of the DØ experiment, asserts that the petitioner has served on five Analysis Review Boards that are made up of four to five members of the collaboration. Professor ██████████ further asserts that the review boards are mostly made up of senior professors but that the petitioner was selected based on his "demonstrated ability as an expert in the field." Professor ██████████, a member of the DØ collaboration, asserts that the petitioner was on the analysis review board for one of his papers that was published in *Physical Review Letters*. The petitioner was "the junior most member of the editorial board, comprising of only 5 members out of 450 scientists from most part [sic] of the world."

The director concluded that the petitioner had not established that his review responsibilities exceed the peer-review duties common within the research profession. On appeal, the petitioner submits two new letters addressing this criterion.

Dr. ██████████ DØ's Physics Coordinator for 2001-2003, asserts that he chose the petitioner out of hundreds of physicists to review new analyses and papers prior to publication. Professor ██████████ one of two spokesmen for DØ from 1996 to 2002, asserts that data collected at Fermilab is typically analyzed by a group of three to ten members. Once the analysis group has produced some results, an editorial board is formed, typically consisting of five scientists not involved in the analysis, to review the analysis. As the task of the editorial boards is "crucial," experienced scientists are typically assigned to the boards.

Professor Weerts asserts that the DØ collaboration has produced over 120 papers in *Physical Review Letters*. According to the letters provided, each of these papers must have been reviewed by approximately five members not involved in the original analysis. It is acknowledged that those who review the analysis work are selected based on their experience and knowledge. It may also be a reflection of the petitioner's promise in the field that he has been selected with less experience than other reviewers. The petitioner, however, cannot narrow his field to junior members of the collaboration. The petitioner must compare with the most experienced and renowned members of his field. While the petitioner's selection is an indication of his reputation among his superiors, it is not indicative of national or international acclaim.

Without evidence that sets the petitioner apart from others in his field, such as evidence that he has received independent requests from a substantial number of journals or served in an editorial position *for a distinguished journal*, we cannot conclude that the petitioner meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director acknowledged the petitioner's original scientific contributions, but concluded that the petitioner had not established that these contributions were of major significance through the submission of evidence independent of the reference letters prepared in support of the petition.

On appeal, the petitioner focuses on his participation in the discovery of the Top Quark. The petitioner asserts that the muon scintillator detector was a key detector component used in the discovery and that he is one of only a "handful of physicists" named as authors of a paper discussing this detector. The paper referenced by the petitioner was published in 1997, although it discusses results from 1994 through 1996. The petitioner was a Ph.D. student until 1998. The paper has 71 authors from 15 different institutions. The list of references does not include the 1995 paper in volume 74 of *Physical Review Letters* that reported the measurement of the top quark. The record does not reveal that the petitioner's 1997 article has been widely cited. While Dr. [REDACTED], the Experiment Run Coordinator of the DØ experiment, asserts that the petitioner developed complex detectors critical to the discover of the top quark, the record is absent a letter from the petitioner's Ph.D. mentor explaining the petitioner's role in that work. Thus, the petitioner's assertions on appeal are not his most persuasive.

Nevertheless, the record contains far more persuasive evidence regarding the petitioner's work with Fermilab's calorimeter. Although the letters are inconsistent as to whether the petitioner supervised 20, 50 or 75 scientists, they are consistent that the petitioner led the calorimeter group for Fermilab. Several references discuss the importance of the calorimeter to Fermilab and the DØ experiment. Professor Michael Tuts, Director of Nevis Labs at Columbia University, asserts that the calorimeter is the "principal detector subsystem" and "heart" of the DØ experiment. The upgrade of this detector was a \$4 million project.

██████████, Professor of Physics at the State University of New York (SUNY), ██████████ asserts that the petitioner was initially a co-leader of the calorimeter group but in late 2002 became the sole leader of the group. A year later, the petitioner “was given the responsibility of determining the jet energy scale.” ██████████ a physicist at Brookhaven National Laboratory, elaborates on this responsibility, asserting that the petitioner is a “co-convener of a group to calibrate the energy scale of particle jets from the measured energy seen in the calorimeter.” Mr. ██████████ further explains that determining the jet energy scale “is crucial for all physics analysis that will come out of the DØ experiment.” The petitioner also submitted a leadership update e-mail to the calorimeter group from Dr. ██████████ thanking the petitioner for his efforts in leading the calorimeter group. In a subsequent letter, Dr. ██████████ asserts that the DØ experiment has published 20 papers in the last year based on jet energies calculated using the petitioner’s methods.

We concur with the director that every researcher who performs original research that adds to the general pool of knowledge has not necessarily made a contribution of major significance to the field as a whole. In addition, we typically require evidence of a researcher’s impact beyond the assertions of his collaborators. In this matter, however, the petitioner has demonstrated that his work is widely cited. The director’s concern regarding the hundreds of other authors credited with this work is understandable. As discussed above, however, the petitioner has not merely provided reference letters with general assertions as to his role in these projects, he has demonstrated that he has lead two DØ experiment groups. Thus, we are persuaded that the petitioner meets this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director noted that it is inherent to the field of science to publish one’s work and expressed concern that only those articles co-authored with hundreds of other researchers were widely cited. Thus, the director determined that the petitioner had not demonstrated that his publication record set him apart from others in the field.

As discussed above, however, while the director’s concern with the large number of co-authors is understandable, the petitioner has demonstrated that he was a group leader. Thus, we are persuaded that he has demonstrated the significance of his role for these widely cited publications. As such, we are persuaded that the petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

At issue for this criterion are the role the petitioner was selected to fill and the reputation of the entity that selected him. As discussed above, the petitioner led the calorimeter group and leads the jet energy scale group. As also discussed above, the letters are inconsistent regarding whether the calorimeter group included 20, 50 or 75 members. While Professor Royon asserts that only two persons in the entire collaboration were selected to lead this important group, it is presumed that every group of the

experiment is vital to the success of the experiment and has its own group leader. Professor ██████ does not indicate the number of groups and group leaders or how many scientists are above the petitioner in the experiment's total hierarchy. Dr. ██████ asserts that only "a very few people of [the petitioner's] age group get such responsible positions." As stated above, however, we will not narrow the petitioner's field to those in his age group.

We acknowledge the assertions of the petitioner's references that his roles have been critical. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Without an organizational chart for the DØ experiment including the number of groups and group leaders as well as the hierarchy for the entire experiment, including the coordinators and spokespersons who submit letters on the petitioner's behalf, we cannot evaluate whether the petitioner's role as a first line supervisor is leading and critical for the entire DØ experiment, which includes upwards of 600 scientists.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a research scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.